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OSHA LIANG L.L.P./SUN TWO HOUSTON CENTER 909 FANNIN, SUITE 3500 HOUSTON, TX 77010			EXAMINER HICKS, MICHAEL J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT N. GOLDBERG, BRUCE K. DANIELS, YURY  
KAMEN, and SYED M. ALI

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Appeal 2008-004510  
Application 10/603,884  
Technology Center 2100

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Decided: July 21, 2009<sup>1</sup>

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Before JOHN C. MARTIN, LANCE LEONARD BARRY, and THU A.  
DANG *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-17. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

## INVENTION

The invention at issue on appeal specifies read/write consistency for an application. For its part, the application comprises at least one transaction, and the transaction comprises "at least one of a plurality of states, at least one of a plurality of transitions, and at least one artifact." (Spec. ¶ 0008.)

## ILLUSTRATIVE CLAIM

1. A system for specifying consistency for an application, comprising:
  - an application comprising a transaction, wherein the transaction comprises at least one of a plurality of states, at least one of a plurality of transitions, and at least one artifact and
  - a database operatively connected to the application;
  - whererin the application accesses data from the database associated with the at least one artifact using a consistency specification when the application enters the at least one of the plurality of the states; and
  - wherein the consistency specification specifies at least one of a read consistency and a write consistency to apply to the at least one artifact.

PRIOR ART

Jensen                      US 5,615,362                      Mar. 25, 1997

REJECTION

Claims 1-17 stand rejected under 35 U.S.C. § 102(b) as anticipated by Jensen.

ISSUE

"Rather than reiterate the positions of the parties *in toto*, we focus on an issue therebetween." *Ex parte Kuruoglu*, No. 2007-0666, 2007 WL 2745820, at \*2 (BPAI 2007). The Examiner makes the following findings:

Jensen et al. is directed to a system for specifying read/write consistency for an application, comprising: an application comprising at least one transaction (column 4, lines 20-30; column 5, lines 59-62, wherein "transaction" means "object instance"), wherein the at least one transaction comprises at least one of a plurality of states, (column 9, lines 22-31) . . . .

(Final Rej. 3 (indenting modified).) The Appellants argue that "the term 'state' used in Jensen corresponds to the state of a given piece of data (see Jensen, col. 9, 11. 20-26). In contrast, the term 'state' as recited in the claims corresponds to the state of the application." (App. Br. 10.) Claim 1, for example, recites "when the application enters the at least one of the plurality of the states." Therefore, the issue before us is whether the Appellants have shown error in the Examiner's finding that Jensen discloses an application that enters at least one of a plurality of states.

## LAW

"[A]nticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

## FINDINGS OF FACT ("FFs")

1. Jensen includes the following disclosure.

According to the invention, in an object-oriented application being executed in a digital computing system comprising a processor, a method and apparatus are provided for managing information retrieved from a structured database, such as a relational database, wherein the processor is used to construct a plurality of object instances . . . .

(Col. 4, ll. 19-24.)

2. "An 'object class' is a set of data (attributes) and functional capabilities (routines) encapsulated into a single logical entity." (Col. 5, ll. 46-48.) "An 'object instance' is an embodiment (instantiation) of an object class. Instances are differentiated from one another by their attribute values, but not their routines (capabilities)." (*Id.* at ll. 51-53.)

3. "In [an] illustrated embodiment, each object instance also contains a reference count and state. Department instance 201 has attribute 203 which contains . . . a state of 1, indicating that the data associated with department instance 201 is valid, i.e., has been read since the last database transaction was committed." (Col. 9, ll. 19-25.) "Employee instance 218 contains . . . a state of 0 in attribute 220. The state of 0 indicates that the data associated with employee instance 218 has been flushed, i.e., has not been read since the last database transaction was committed." (*Id.* at ll. 30-34.)

### ANALYSIS

Jensen discloses a digital computing system that executes an object-oriented application. (FF 1.) The system's processor constructs object instances. (*Id.*) As an instantiation of an object class, each object instance comprises data and routines encapsulated into a single logical entity. (FF 2.) Each object instance also contains a state, which indicates whether the instance's data are valid or have been flushed. (FF 3.)

As best as we can tell, the Examiner reads the claimed "application" on the object-oriented application of the reference and reads the claimed "transaction" on an object instance. As mentioned above, he reads the claimed "states" on the states of the object instances. The Examiner has not shown, however, that Jensen's object-oriented application enters at least one of the states of the object instances. Rather than constituting states of the object-oriented application, in fact, we agree with the Appellants that "the term 'state' used in Jensen corresponds to the state of a given piece of data."

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(Br. 10.) The absence of an application that enters at least one of a plurality of states negates anticipation.

### CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellants have shown error in the Examiner's finding that Jensen discloses an application that enters at least one of a plurality of states.

### DECISION

We reverse the rejection of claims 1-17.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v).

### REVERSED

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